

Appellant's claim was accompanied by a memorandum from Edith Kurth of the Federal Law Enforcement Training Center (FLETC) advising the Office that appellant's Form CA-1 was initially handled as a no lost time/no medical expenses claim, but she received notification on June 16, 2003 that due to injury, appellant was required to undergo a fitness-for-duty examination to obtain medical clearance. Ms. Kurth stated that, since appellant was injured at FLETC and it maintained his original Form CA-1 and medical notes, she wished to have a claim established. Ms. Kurth's memorandum was accompanied by the August 10, 2002 medical treatment notes of Dr. Brian Maziarz, Board-certified in occupational medicine, and B. Edward Roberts, a physician's assistant, who are both with the FLETC health unit, regarding appellant's left shoulder condition.

By letter dated July 8, 2003, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised appellant about the type of factual and medical evidence he needed to submit to establish his claim.

Subsequently, the Office received a June 17, 2003 medical report from Dr. Spencer J. Wheeler, a Board-certified orthopedic surgeon, finding that appellant had mild impingement syndrome with a significant labral tear of the left shoulder and that a magnetic resonance imaging (MRI) scan was needed to confirm the diagnosis.

On July 28, 2003 appellant submitted factual information requested by the Office including a statement from Deputy U.S. Marshal Anthony A. Jurgensen indicating that he witnessed appellant sustain an injury on August 10, 2002 during defensive techniques class and he escorted him to the medical facility on site for treatment. Appellant resubmitted copies of the August 10, 2002 treatment notes of Dr. Maziarz and Mr. Roberts.

By decision dated August 11, 2003, the Office found the medical evidence of record insufficient to establish that appellant sustained an injury due to the accepted event.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each

¹ Subsequent to the Office's August 11, 2003 decision, the Office received new medical evidence, as well as medical evidence previously of record. Appellant has also submitted new medical evidence on appeal. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether an employee has sustained a traumatic injury in the performance of duty, “fact of injury” must first be established.⁵ The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷ The medical evidence required to establish causal relationship is usually rationalized medical evidence.⁸

ANALYSIS

In this case, appellant satisfied the first criteria. It is undisputed that appellant was engaged in a defensive techniques class on August 10, 2002. The Office, however, found that the evidence did not establish that a medical condition was caused by the August 10, 2002 employment incident. The August 10, 2002 medical treatment notes of Dr. Maziarz indicated that appellant stated that he sustained a left shoulder injury. Dr. Maziarz did not either provide a diagnosis or address whether a diagnosed condition was caused by the August 10, 2002 employment incident.

The August 10, 2002 medical treatment notes of Mr. Roberts, a physician’s assistant, revealed that physical examination of appellant’s left shoulder revealed no obvious dislocation or deformity. There was slight point tenderness over the acromioclavicular joint and no trouble with active range of motion. Regarding a diagnosis, Mr. Roberts stated that appellant sustained an injury to the left shoulder. Mr. Roberts’ treatment notes are of no probative value in establishing an injury because a physician’s assistant is not a “physician” as defined under the Act.⁹

Dr. Wheeler’s June 17, 2003 medical report provided a history of injury that appellant suffered from shoulder pain, popping and discomfort for over a year. He stated that “there has been no specific injury although there could have been something years ago because [appellant] played a lot of sports growing up.” Dr. Wheeler provided his findings on physical and x-ray examination. He diagnosed mild impingement syndrome with a significant labral tear of the left shoulder. He stated that “I do not think anything short of a magnetic resonance imaging [scan] will confirm the diagnosis for us.” Dr. Wheeler did not provide a definitive diagnosis for appellant’s left shoulder condition or provide a rationalized medical opinion attributing

⁴ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

⁵ *Neal C. Evins*, 48 ECAB 252 (1996).

⁶ *Michael W. Hicks*, 50 ECAB 325, 328 (1999).

⁷ 5 U.S.C. § 8101(5); 20 C.F.R. § 10.5(ee) (1999) (defining injury).

⁸ *Michael E. Smith*, *supra* note 4.

⁹ 5 U.S.C. § 8101(2); *Lyle E. Dayberry*, 49 ECAB 369 (1998).

appellant's shoulder condition to the August 10, 2002 employment incident.

CONCLUSION

As appellant has failed to submit rationalized medical evidence establishing that he sustained an injury caused by the August 10, 2002 employment incident, the Board finds that he has failed to satisfy his burden of proof in this case.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member